

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

COREY C. ABERNATHY,

Plaintiff,

v.

MATTHEW ROGERS, and
DISTRICT ATTORNEY,

Defendants.

No.: 3:17-cv-405-TAV-CCS

MEMORANDUM OPINION

The Court is in receipt of a pro se prisoner's civil rights complaint under 42 U.S.C. § 1983 [Doc. 1] and an application to proceed *in forma pauperis* [Doc. 2]. For the reasons set forth below, Plaintiff's motion for leave to proceed *in forma pauperis* [Doc. 2] will be **DENIED**, no process will issue, and this action will be **DISMISSED without prejudice** to Plaintiff filing a fee-paid § 1983 complaint, pursuant to the three-strike rule of 28 U.S.C. § 1915(g).

Section 1915(g) of the Prison Litigation Reform Act of 1996 ("PLRA") provides as follows:

In no event shall a prisoner bring a civil action [*in forma pauperis*] . . . if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

While incarcerated, Plaintiff has filed at least three prior civil rights actions that were dismissed as frivolous. *See Abernathy v. Hayes*, Civil Action No. 1:15-CV-291 (E.D. Tenn. Nov. 3, 2015) (dismissed for failure to state a claim); *Abernathy v. Cupp*, Civil Action No. 1:04-CV-

317 (E.D. Tenn. Mar. 8, 2005) (dismissed as frivolous); *Abernathy v. Tennessee*, Civil Action No. 1:02-CV-292 (E.D. Tenn. Sept. 23, 2002) (dismissed as frivolous and for failure to state a claim).

Nothing in Plaintiff's complaint suggests that Plaintiff was in "imminent danger of serious physical injury" at the time he filed his lawsuit, the only exception provided in 28 U.S.C. §1915(g). Accordingly, Plaintiff's motion for leave to proceed *in forma pauperis* [Doc. 2] will be **DENIED**. Plaintiff's complaint will be **DISMISSED without prejudice** to Plaintiff filing a fee-paid § 1983 complaint, pursuant to the three-strike rule of 28 U.S.C. § 1915(g).

The Court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous.

AN APPROPRIATE ORDER WILL ENTER.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE